

WAGANAKISING ODAWAK STATUTE # 2013-007
CONTRACTING

SECTION I. SHORT TITLE

 This Statute shall be entitled “Contract” Statute. This statute rescinds and replaces any and all previous Statutes, Resolution, Regulations and/or policies related to this subject matter. This Statute repeals and replaces WOS 2002-04, Section III. C. Contractors and Subcontractors.

SECTION II. PURPOSE

 To authorize the Tribe and its sub-entities to negotiate, execute and enforce contracts within the parameters stated in this Statute and provide for signatory authority.

SECTION III. DEFINITIONS

A. “Competitive Contracts” means contracts for which one or more vendors compete by placing bids.

B. “Enjinaaknegeng” means the LTBB Legal Department.

C. “Financial Signatory Authority” means a designated person within the Tribe or its sub-entity that has the authority to process finances.

D. “Frivolous law suit” means a suit without any legal merit.

E. “Non-Competitive Contracts” means contracts that do not require public notice or bids.

F. “Official” means any person holding an elective or appointed office in any branch, entity, enterprise, authority, division, department, office, commission, council, board, bureau,

ccommittee, legislative body, agency and any establishment within the Executive, Legislative or Judiciary branch of the Tribe including Members of the Election Board and Prosecutors.

G. “Preponderance of the Evidence” means just enough evidence to make it more likely than not that the fact the claimant seeks to prove is true.

SECTION IV. LEGAL and FINANCIAL REVIEW

A. To ensure that all contracts follow Tribal law and are in the best interest of the Tribe, all contracts entered into on behalf of Little Traverse Bay Bands of Odawa Indians (LTBB) or Odawa Casino Resort (OCR) or other LTBB Tribal entities must be reviewed by Enjinaaknegeng and the Financial Signatory Authority before they are executed and/or take effect.

1. Enjinaaknegeng shall review contracts for legal form, including, but not limited to, appropriate designation of parties, legal consideration (i.e., mutual obligations), jurisdiction, waiver of sovereign immunity, term and liability.

2. Financial review will be conducted to ensure that all contracts are allowable under the program, budget and/or adequate finances are available to cover the contract.

SECTION V. WAIVER OF SOVERIEGN IMMUNITY

A. Any contract containing a provision for a waiver of sovereign immunity shall be approved by Tribal Council before they are executed and/or take effect unless otherwise authorized by Statute or Resolution.

B. The Tribal Council clearly and expressly waives its sovereign immunity to the Limited Remedies as set forth in this Statute for any official that violates this Statute.

SECTION VI. CENTRAL REPOSITORY FOR CONTRACTS

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2 In order to maintain a central repository for contracts, a copy of all final, executed
3 contracts entered into on behalf of LTBB or OCR or other LTBB Tribal entities shall be sent to
4 Enjinaaknegeng for placement in a contracts repository. The repository may be kept
5 electronically as long as backups are maintained.
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8 **SECTION VII. ETHICAL RESPONSIBILITIES OF LTBB CONTRACTING**
9 **PARTIES**
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11 **A. Standards of Conduct for Officials as Contracting Parties.** All LTBB officials shall
12 abide by Little Traverse Bay Bands of Odawa Indians *Constitutionally Mandated Rules of Conduct*
13 *for Officials of Tribal Government* when involved in contracting activities.
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15 **B. Standards of Conduct for Employees as Contracting Parties.** Employees shall
16 disclose any potential conflict of interest when involved in contracting activities and shall abide
17 all terms of the Employee handbook related to ethical considerations involving contracting
18 activities.
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21 **SECTION VIII. TRIBAL CITIZENS PREFERENCE**
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23 **A. Non-Competitive Contracts and Competitive Contracts.** Contracting Parties must give
24 a preference to Tribal Citizens and Tribal Citizen owned businesses in issuing noncompetitive
25 and competitive contracts.
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27 **B.** LTBB Tribal Citizen Contractors/Vendors shall be given preference with respect to request
28 for proposals and quotes only. A list of qualified LTBB Tribal Citizen Contractors/Vendors shall
29 be maintained and updated semi-annually by the LTBB Executive or designee and shall be
30 presented to Tribal Council for approval. This list may be subject to review by Enjinaaknegeng at
31 any time.
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33 **C.** LTBB Tribal Citizen Contractors/Vendors:
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1 **1.** Shall hold similar qualifications as all other Contractors/Vendors in their product,
2 service or specialty area.

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4 **2.** Shall maintain quality of product, service or specialty area which is consistent with
5 standards for their particular industry. If quality standards are not maintained, the contract
6 may be revoked.

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8 **3.** Shall maintain timeliness of delivery and/or service which is consistent with
9 standards for their particular industry. If timeliness standards are not maintained, the
10 contract may be revoked.

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12 **4.** Shall be required to hold required licensure, provide performance bonds, etc. as
13 required and/or stipulated in the request for proposal.

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15 **D.** The Contracting Party shall not be bound by pricing with respect to Tribal Preference. For
16 example, the LTBB Contractor/Vendor shall not receive a premium over others bidders due to
17 Tribal Citizenry. In addition, a Tribal Citizen Contractor/Vendor that provides the lowest quote,
18 yet does not meet the qualifications as noted above, may not be awarded the contract.

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21 **SECTION IX. AUTHORIZING SIGNATURES**

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23 **A.** As a general rule, only the persons with direct authority may sign a contract that binds the
24 Tribe. An employee who enters into a contract that binds the Tribe or its sub-entities without
25 authority may be subject to disciplinary actions, including termination. An Official who enters into
26 a contract that binds the Tribe or its sub-entities without authority may be held personally liable.

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28 **B.** The Accounting Office will not issue and/or sign a check for goods and services obtained
29 in violation of this policy without a written justification substantiating why the contract was not
30 presented in a timely fashion or was signed by an unauthorized person.

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33 **SECTION X. LIMITED REMEDIES BEFORE THE TRIBAL COURT FOR**
34 **VIOLATIONS**

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2 **A.** An Official who enters into a contract that binds the Tribe or its sub-entities without
3 authority may be personally sued for the incurred liability. Any claim of violation against an
4 Official must be filed with the Tribal Court within one-hundred and eighty (180) days of the
5 alleged violation.

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7 **B.** In any action filed under this Statute, the Tribal Court may grant the following
8 remedies:

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10 **1.** *Equitable Remedies.* If the Tribal Court determines that the preponderance
11 of the evidence indicates that a violation occurred, its judgment must specify an
12 appropriate equitable remedy or remedies for that violation.

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14 **2.** *Damages.*

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16 **a.** The standard for determining whether a violation of this statute has
17 occurred for the purpose of imposing damages is “preponderance of the
18 evidence.”

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20 **b.** If the Tribal Court finds a violation of this statute occurred with
21 negligence, gross negligence, reckless indifference or malice, the Tribal Court
22 may additionally award compensatory, punitive damages and/or fines.

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24 **3.** The Tribal Court may award reasonable attorney fees and costs at its
25 discretion to the prevailing.

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27 **4.** If the Tribal Court finds that the non-prevailing party’s claims were
28 frivolous, the Court should fine the party and may order any other remedies as the
29 Tribal Court deems appropriate.

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32 **SECTION XI. SAVINGS CLAUSE**
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1 In the event that any phrase, provision, part, paragraph, subsection or section of
2 this statute is found by a court of competent jurisdiction to violate the Constitution of the Little
3 Traverse Bay Bands of Odawa Indians, such phrase, provision, part, paragraph, subsection or
4 section shall be considered to stand alone and to be deleted, the entirety of the balance of the
5 statute remain in full and binding force and effect.
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8 **SECTION XII. EFFECTIVE DATE**
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10 Effective upon signature of the Executive or 30 days from Tribal Council approval
11 whichever comes first, or, if the Executive vetoes the legislation, then upon Tribal Council
12 override of the veto.
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16 **CERTIFICATION**
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